

Goldring (C.) *15-12-8*
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**A
D E F E N C E
OF THE CONDUCT
OF THE
W A R D E N
OF WINCHESTER COLLEGE
In accepting that WARDENSHIP.**

The SECOND EDITION, Corrected.



L O N D O N :

**Printed for R. and J. DODSLEY in Pall Mall,
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M.DCC.LIX.

[Price One Shilling.]

2

DEFENCE

OF THE CONDUCT

OF THE

W. A. R. D. E. N.

OF WINCHESTER COLLEGE

In according to the W. A. R. D. E. N.

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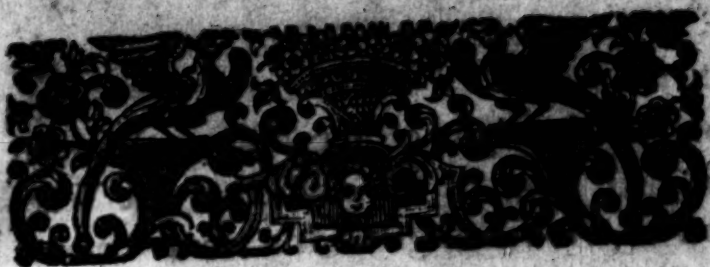


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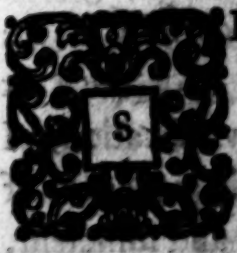
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A
D E F E N C E
O F T H E C O N D U C T
O F T H E
W A R D E N
O F W I N C H E S T E R C O L L E G E.

INCE I find myself censur-
ed, with great liberty, by the
'Author, whoever he be, of a
late Letter to Dr. Lowth,
for accepting the Warden-
ship of this college, when freely offered
me, on the last vacancy, by the Right Rev.
the Lord Bishop of WINCHESTER; in con-
sequence of a dévolution made to his lord-

ship

ship of the right of appointing a Warden for that turn, by the election of the Warden of New-college to it: some defence seems necessary on my part, both in justice to myself, and lest misreports of my character, uncontradicted, should be productive of ill effects: especially among the youth, whose education I inspect, and whose unprejudiced regard and observance is the chief instrument, which enables me, in the most important instances, to serve them, and, in being serviceable to them, to advance, in proportion, the interests of the community. Now, because there is no authentick test, whereby to decide concerning the merit of such proceeding, but the statutes respecting the occasion of it; I hope, I may be excused, for once at least, if, in order to my vindication, I produce, and explain, such passages of those statutes, as are proper and sufficient, in this case, to be alleged; that, when they are rightly stated and understood, and the conduct arraigned compared with them, it may, with the utmost certainty of judge-

judgement, if found to be agreeable to them, be absolved; and, if disagreeable, condemned.

Statutes, in general, being nothing more than expressions of the Founder's will, in enquiries into their meaning, the principal thing to be regarded is the Founder's *intent* in composing them; the *nostra intentionis propositum*, so much insisted on by the Founder of the two St. Mary Winchester colleges.

This intent is either *general* or *special*: the general is that of the whole frame of statutes taken together, and considered as a system of polity: the special, that of each statute, in particular. The latter of which must always be supposed to consist and harmonize with the former. And therefore the interpretation given of particular statutes must be such, as may conspire with the general purpose and design of the whole body. To suppose otherwise were to suppose the Founder to be at variance with himself.

This premised, I enter upon my design of inquiring, what the statutes of Winchester college prescribe in regard to the election of a Warden of that college. And I find, upon search, but one amongst them, which directly and professedly treats of that subject: and in that, only a single passage, which determines the order or class of persons, out of which such Warden is to be elected.

The passage I mean occurs under the sixth rubrick, and it runs thus. — “ *Unum de ipsis scrutatoribus, vel de aliis sociis de ipso nostro collegio Oxonia, seu de sociis presbyteris collegii nostri prope Wintoniam, aut de illis qui aliquando fuerunt in ipso collegio nostro Oxonia, seu collegio prope Wintoniam, socii, & ex causis licitis & honestis recesserunt.*” --- sc. *ab ipso* (for the expression is elliptical) or, as it is afterwards supplied in the same statute speaking of the same subject, *ab eodem*; referring to *collegio*.

The

The purport of which passage, grammatically construed, I apprehend to be, that the person to be chosen Warden of Winchester college, upon a vacancy in that post, is required to be "either one of the scrutators or other fellows of New-college, or one of the fellows of Winchester-college; or else one, who hath formerly been a fellow of one or other of these colleges, and hath left the college, to which he belonged, upon lawful and reputable reasons, or, if you please, with a fair character."

There is but one order of collegiate persons mentioned in this description, which is that of *fellows*: but this, however, under three distinctions,

I. Fellows of New-college:

II. Fellows of Winchester-college: and

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III. Such

III. Such persons as *have been*, formerly, fellows of one or other of the said colleges, and have *left* the college, to which they belonged, with a good character.

These are all the sorts of persons capacitated by this statute to be elected Wardens of Winchester-college.

And where, I ask, among them all, is the Warden of New-college to be found? He is not, that I can perceive, in any part inserted, by the name either of his office, or of any class, which may include him. And here, indeed, it is allowed me, for it cannot be denied, that his name doth not appear: but then it is insisted on, that there is, in this passage, a class of persons distinctly mentioned, under which he both *may* and *ought* to be ranked as an individual.

Whether there be or not, we shall probably soon discover. In passing, I cannot but *remark*, that it is highly probable, so singular

lar a character, as the Warden of New-college, in virtue of his station, supports; being placed by the Founder on the highest point of eminence in both his societies, invested with so many and such considerable privileges, and treated with so much respect in the different parts of the statutes; being never, as I suppose, omitted, where it might be expected he should be concerned, nor ever named amongst others but with precedence; I say, it is highly probable, that the Founder, had he ever intended to give him the claim that is now in dispute, would not only have included him under some general expression, but have done him the honour likewise of a distinct and particular mention. For so much regard as this, I observe, he hath actually paid to the pretensions of inferior claimants. By them I mean the scrutators; who, besides being comprehended under the name of fellows, are likewise mentioned by that of scrutators; lest, as it should seem, even so small a distinction as that employment gives

gives them, during the time of an election, beyond the rest of the fellows, might, at so critical a season, by a perverse mind, be interpreted to their disadvantage. Nay, it is not only probable, that the Founder would, in *any* case, have been equally solicitous to secure the rights of the Warden with those of any of the fellows, but that in *this* case he would even have enlarged them *beyond* those of the fellows, by giving him his choice first; a preference, for which they would have thought themselves sufficiently recompenced by the chance it would have given some one amongst them, in case he should chuse to move, of being advanced into his place. This is but suitable to the superiour regard and pre-eminence, with which the Founder throughout his statutes distinguishes the Warden. See a substantial example of it under the 38th rubrick of those of New-college. And so much, therefore, as this, it is not unlikely, he would have done in his favour; at least it is much more likely, than that he should have passed him
over

over in silence, had he considered the headship of Winchester-college as an object desirable by him, and at the same time approved of his being elected to it. On the other hand, had he considered it, as the state of it then required he should, in a light the very reverse of this; as a thing utterly uneligible by the Warden of New-college, and no means worthy his acceptance; since, in order to take it, he must give up a post of superiour dignity, power and emolument; and yet, for reasons which escape my discernment, still resolved, that he should be translated, or made capable at least of being translated, to it, it is scarce to be imagined, as I should think, but that he would have expressed his pleasure to this purpose in some very significant manner: and especially had he preferred his removal to Winchester to his continuance at New-college, it is not to be doubted, but he would have issued out a command to him, or at least a strong and pressing intreaty, that he would consent to be so degraded;

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a bare permission to this effect, though ever so clear, not being likely, in such circumstances, to have proved extremely operative : and that such circumstances would change to the contrary it was not in human power to foresee. Thus, upon either supposition, had it really been the Founder's intention to have allowed of the Warden of New-college as a proper person to be elected ; it is far more probable, that he would have explained such intention in the clearest terms he could invent, and by a direct and particular mention of him, than that he would have left it to be collected from mere general expressions, or from yet more obscure intimations. Which I point out only as a reasonable prejudice in disfavour of all such arguments as tend to introduce the Warden by *implication* : and so far certainly it ought to operate, as to prevent such arguments from being hastily admitted, or before their real force hath been accurately tried and discovered.

With

With this presumption I proceed thus on my design.

If the Warden of New-college be included in the clause of the statute above-cited by *implication*, it must be under one or other of the branches of that division, which I have above given of it; these containing, as far as I can judge, the whole sense of the said clause. Now which is it of these branches that comprehends the Warden of New-college?

Certainly not the first. He cannot be Warden and fellow too. For the Warden is distinguished by the statute from the fellows, and made superiour to them all. And if he were reckoned a fellow, the number of fellows and scholars together would exceed that which is limited by the statute.

Neither the second. He cannot be a member of both colleges at once. For then

then the number of different persons assigned to both colleges, taken together, would be incomplete,

No, nor yet, as I apprehend, the third. For though he be not a fellow, as without doubt he *hath* been, in the one or the other, of these colleges, yet as *Warden*, he must be *of* the college, that is, a part or member of it; and whilst a man is *of* the college, how it can be true of him, that he hath, at the same time, *left* it, exceeds, I own, my capacity to comprehend.

As to the two first of these assertions, there is not, that I know, any dispute. Nor need there be in regard to the third, if I have stated the third member of my division rightly, that is, given it its true sense. And, as this is a point of chief importance, I shall endeavour to satisfy my reader upon it fully.

The

The words, in which it is expressed in the original, are these: *Aut de illis, qui aliquando fuerunt in ipso collegio nostro Oxoniæ, seu collegio prope Wintoniam, socii, et ex causis licitis et honestis recesserunt.*

Which last word *recesserunt*, being elliptical, must have its sense supplied by understanding *ab eodem*, as it is afterwards in the same statute supplied, referring to *collegio* before mentioned.

Now these words are capable of being rendered in two manners.

Either, according to the order in which they stand in the original, thus; *“Or out of those, who have formerly been in our college at Oxford, or the college near Winchester, fellows, and for reasons lawful and honest have departed from the same;”* namely, from their respective college:

Or,

Or, by a transposition of the word, fellows, thus;—"Or out of those, who have formerly been fellows in our college at Oxford, or the college near Winchester, and for reasons lawful and honest have departed from the same;" that is, as before, from their respective college.

The difference of which renderings is, that in the former the distinction between the being *in* or *of* one of these colleges, that is, *a member in general*, and the being a *fellow*, as opposed to the being a scholar, chaplain, or any other *sort* of member *in particular*, is better preserved than it is in the latter: agreeably to the stress, which, by the position of it, seems to be laid upon the word *socii* in the original, whereby its restrictive sense is rendered, though not more real, yet more discernible, than it would have been, had the word been placed in any other situation in the sentence. This, I believe, will readily be perceived by any unprejudiced person, who shall

shall read the two versions with attention and compare them both with the original. How far this difference between them might recommend the latter, rather than the former, to the regard of those, who are interested in having this distinction suppressed, I cannot say: but, certainly, the latter best suits their purpose, and enables them, with most convenience, to confound a fellowship of a college with a membership; as those do (not, surely, through inadvertence) who, in explaining this passage, represent the leaving a fellowship as equivalent with leaving the college. Nevertheless, any one may, with my free and full consent, adopt which rendering he pleases; for a reason which will not fail to appear as we state the sense of *recesserunt à collegio*.

To take the words of this phrase separately.

Collegium signifies, as I conceive, "a company of persons incorporated into one so-

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ciety,

ciety, considered in their collective capacity." The Founder, speaking of his own colleges, defines them both to be such. See the first rubrick of each body of statutes, under which he reckons up the several members, which compose each college, and declares each college respectively to consist of those members: so that, according to him, the word *collegium*, taken properly, *always* means the society, (then spoken of, whichever it be) the whole society, or body corporate, consisting of Warden, fellows, scholars, and the rest of the members, of their several ranks and denominations, taken collectively,

But, as most other words, so this, hath a figurative, as well as proper, sense; and by an easy metonymy, may be used, and is sometimes used, for the building, or mansion-house, wherein this society is supposed to reside. And though these senses are different, they are very consistent; and there is, ordinarily, no danger of confounding them. The adjuncts commonly

ly shew, in any particular passage, which of the two is meant. In that under consideration mention is made of *fellows* of the *college*. Now as *fellows* are no parts of the building, but only of the society, common sense declares, that *à collegio*, in the phrase we are speaking of, must signify, *from the society*.

Recedere, as every one knows, is to leave, or depart from, whatever the thing left, or departed from, be.

Join these, and *recedere à collegio* must mean, to leave, or depart from the society. *Recesserunt à collegio*, therefore, must express the condition of such persons as have left the society. A child of the lowest class at school is able to prove this.

Now in what sense can a member of any society be said to have left that society, but by having ceased to be a member of it? The mere having changed his place within it, in passing from one station

to another, from a scholarship, for example, to a fellowship, from a fellowship to the headship, or the like, is by no means the having left it; nor is it ever called so in the statutes, nor indeed can be so called with the least propriety. Nothing less than a compleat detachment from the body, so as no longer to retain any union with it, will come up to the import of this phrase, used absolutely and without any limitation, as it is in this statute. But this, indeed, will; and it is the common phrase made use of in the statutes, whereby to express this very case.

Whichever therefore of the above ways of interpretation be admitted, it comes to just the same thing in the end. The person eligible, according to either of them, must be one who hath left, not only his fellowship, but the society.

Now it is certain, that the Warden of New-college is, as such, a member of that college; not indeed, as this word is sometimes

sometimes used, in opposition to the head, but as it signifies an integral part only. He is reckoned and declared to be such by the Founder, under the first and ninth rubricks of the statutes of that college: indeed, the principal, most essential and necessary member of all. He cannot therefore, if we speak seriously, ingenuously, and pertinently to the purport of this statute, be said, whilst he presides in it, to have left the society. And what shews this beyond contradiction, is, that, in the statutes of New-college, the Founder frequently speaks of him as of one *still* capable of receding from the college, and, consequently, as *not* being yet in that state of separation from it, which is required by the statute. See rubr. 11. 39. 66.

Therefore, neither falls he within *this* branch of the division above-given, under which alone he is said to be comprehended. Consequently, he is not within this statute *by implication*. It is confessed,

ferred, he is not so by *express mention*. Thence I conclude, that he is not within it *at all*. The Founder hath intirely passed him over, and never offered him, in *any* manner, to the choice of the electors.

I shall be said, here, to have made my conclusion too extensive. There *may be* Wardens of New-college, and certainly *have been*, though (which shelters *me* from the force of the objection) it is not the case of the present gentleman, who have been called from *abroad* to be made Wardens there, having before left the society, and continued for some time no members of it. Of these may it not with truth be said, that *à collegio recesserunt*? Whatever be determined in the case of others, these surely may be allowed to pass for properly qualified in this respect.

This is plausible, but not solid. The having left the college, in the case of one,

one, who is since returned to it and re-admitted, is proof only, that he *has* been qualified, not, that he *is* qualified *still*: whereas whatever the statute prescribes or supposes, as a qualification or condition, of the person eligible, must be found to belong to him *at the time* of his election; not, only to *have* belonged to him at some *former* period of his life. During the time his recess lasted, undoubtedly he had a title to plead that recess, in order to obtain any advantages that might result from it; but when the recess *itself* was over, how any right, founded *on* it, should not also have expired *with* it, is what, I acknowledge, I do not understand.

May we not then distinguish, it will be asked, between the *act* of *receding*, and the *state* of *recess*; and, if occasion be, confine the word *recesserunt* to the signifying the first of these only, and not the last? I answer, if the Founder hath so distinguished and so limited the signi-

fication of this word, others undoubtedly may follow his example : but without such authority, I cannot say I should advise such procedure. The word, left to itself, signifies both the act, and the state into which a person is brought by that act. Thus much indeed is true, that it cannot ever signify the act alone, without the state, because the act is nothing else but a man's putting himself into the state. But it *may* very well, and, when the case happens, it *must*, signify the state without the act ; as when a man comes into such a state, but not by his own act ; for example, when in consequence of some other act of his own, some offence that he hath committed, he is expelled by the act of the society or governing part of it ; when his fellowship expires without his resigning it : in these, and the like cases, *recessit* is the word used concerning him ; though, if you go to distinguishing, nothing more is meant by it, than that he *is now* in the state expressed by that word, a state of separation from the society.

ciety. In support of this, I appeal to the statutes of Winchester-college, rubr. 3d. which treats of the election of scholars into that college, and says, they are to be admitted into it *loco scholarium ad collegium nostrum Oxoniae mittendorum, seu in collegio nostro propè Wintoniam decedentium, seu aliàs recedentium ab eodem*—where the *aliàs* shews that the being transmitted to Oxford, (or *sped*, as we call it) and the dying within the college, though no *acts* of the *persons* receding, are, yet, reckoned among the *ways* of receding, that is, of making vacancies. And if this sense of the word *aliàs* be not admitted, yet it must at least be allowed, that *recedentium* here includes all *other* ways of departing from the college except those by death and transmission, and that will extend to a sufficient variety. In the case of expulsion 'tis expressly used in the 67th of the statutes of New-college. And what farther shews, that the distinction above-mentioned is of no avail, is the direct opposition, which

we

we find in the clause before us, between the words *aliquando fuerunt in ipso*, and the word *recesserunt*; by which it becomes equivalent to this, *aliquando quidem fuerunt in ipso, nunc autem non sunt amplius in ipso, quia, scilicet, ab ipso recesserunt*. Add *socii*, 'twill be all one; *aliquando fuerunt in ipso socii, nunc autem ideo non sunt in ipso socii, quia ab ipso recesserunt*. This, I am persuaded, is the true sense, though it be not the exact form, of the sentence. And a passage in the New-college statutes, written on a similar occasion, and to the same purpose, with this, confirms me in this opinion. It relates to the election of a Warden of New-college, and directs the electors to chuse "one of themselves the scrutators, or of the other fellows of that college, or of those, who once were of that college, fellows, and for lawful and honest reasons went off from it." Which direction, when given afterwards to the Bishop of Winchester, as a rule for him to proceed by in appointing a Warden of New-college

New-college on a devolution, is delivered in this form, "one true and perpetual fellow of the college (meaning New-college) then in the same existing, or, who before had been in the college, and for honest reasons had gone off from the same." Where the words, *then in the same existing*, which go before, leave no manner of doubt about the sense of those which follow, namely, *had gone off from the same*. And the passage under consideration is exactly parallel to this. If, notwithstanding all this, it be still insisted on, that the opposition here met with is not between the having been once, and the not being now, *of the college*; but between the having been once, and the not being now, *fellows*; I must beg leave to supply the words that are wanting to make this opposition appear distinctly, and see how the sentence will then look---*aliquando fuerunt in ipso collegio socii, nunc autem, etsi non sint socii, sunt tamen in ipso collegio, et ab eodem recesserunt*. Indeed! and how is this

this riddle to be solved? Why, thus, *re-
cesserunt quidem, sed alio aliquo tempore,
quàm de quo hìc agitur*. Needs there any
reply to be made to this? Were it true,
is it any thing more than a mere cavil,
owing to the perverse acceptation of an
ambiguous word? and is not the caution
given above, against yielding to slight
arguments, of this tendency, able to
shield me from the force of such a cavil?
But in truth it hath no foundation. *Re-
cesserunt*, here, is not equivocal. It sig-
nifies but one thing, which is this, that
the persons, to whom it is applied, are
still to be reckoned among those who
have quitted the society. And this it
doth, notwithstanding it be expressed in
the preter tense; for that is only to de-
note that the *act* is past, and therefore
compleat, however the *state*, ensuing on
it, may remain; which is more than the
present tense would have done: for that
would only have signified that the *act*
is now in performing. For this I appeal
to the grammarians; and shall only put
a case,

a case, which is suggested to me by a clause in our own statutes, which forbids the scholars to loiter in the hall after meals: and this is expressed by an order, that, as soon as dinner or supper is over, unless in extraordinary cases, they shall retire thence, *ab aulâ recedant*. Suppose, now, one of these poor lads, in the gaiety of his heart, should think himself a match for this order; and, in defiance of it, stay behind the rest, at such a time, in the hall, (for any purpose you will please to suppose) or should even go out with them, and return back; and being detected, and questioned upon his behaviour, should urge in his defence, that he had obeyed the statute, and, though in the very hall itself, maintain, to the face of his governour, that *ab aulâ recesserat*: meaning, as it should seem, when pressed to an explanation, that he had done so yesterday, or the day before, or, it may be, a twelvemonth since; how are we to imagine such a plea would be taken? as a just excuse?

or

or not rather, as a prevarication with the statute ten times more offensive than the fault which occasioned it? Now it is of no moment, whether it be the hall, or the society, that is said to have been left. The *having left* either, in the import of the statute, cannot consist with the *being in it*. *Recesserunt* therefore can bear no other meaning, than what I have assigned to it in the passage before us; and if you would explain it from the context, it must not be thus—*ita recesserunt, ut postea ad collegium redierint*—but *ita recesserunt, ut non sint nunc in collegio*. And, in order to include the case contended for, there must have been another member added to the clause. It must have been, not only—*aut de illis, qui aliquando fuerunt in ipso collegio socii, et recesserunt*—but—*aut de illis etiam, qui post talem recessum iterum in collegium recepti fuerunt*.

In short, and to take our leave of such trifling, the Founder was no dealer in subtilties.

subtilties. Plain sense he chose to express in a plain manner: and it is no difficulty to understand his meaning, if we will but allow him to mean what he says. *Those who have formerly been fellows in one or other of his colleges, and have left their respective college with a fair character,*" is very intelligible: and there are many, whose cases it will perfectly suit. Gentlemen, for instance, who, having been fellows of New-college and finished their education there with credit, have since been advanced to preferments, settled upon benefices, transferred to the other college, promoted to dignities, or possessed of estates inconsistent with retaining their fellowships; or who, having been fellows of Winchester college, have, in like manner, left that college without any stain upon their characters. These, and others in similar circumstances, whom I pretend not accurately to enumerate, are the persons, who, in all probability were in the Founder's mind, whilst he was compiling this statute: they fall so naturally

naturally within his description, without the least force or equivocation whatsoever. Why should we think then he had any others in view, whose title must at best, be obscure and disputable? Why the Warden of New-college in particular? who, with all the force that can be used, can never be brought within it: but whose pretensions had the Founder thought fit to favour, no doubt he would have done it in the most open manner, and placed him the very foremost in rank.

Such is the explication of this statute, which, as far as I am capable of judging, ought to take place, as being that, which the literal construction of the words, taken as they stand, suggests: and which, as I shall now add, the general scope and aim of the Founder, visible in the whole tenor of his statutes, requires. For what was this aim and intention, but, as he informs us himself, the advancement of religion and science, by erecting two societies, one subordinate

nate and preparatory to the other, to be perpetually employed in the culture of both? And how was this culture to be carried on but by the settlement of a form of discipline in each college, suited to its respective design, to be administered and enforced by proper officers, under the inspection and subject to the controul (though in the different colleges in very different degrees and manners) of the head of the principal society? He, in the ordinary course of things, is constituted the superintendent of the whole polity: the eye and hand of the Founder; to observe, and to rectify, whatever may happen, in the conduct of the administration, to be mismanaged, or disconcerted in it. And upon his vigilance, activity, and address, in supporting a vigorous and impartial discipline, the success of the Founder's establishment must ever in a great measure depend.

To enable him to exert this power freely, there is nothing of so great importance,

portance, as that he should be independent: independent, I mean, on those he is to govern; so as not to have his condition capable of being either improved, or impaired, to any considerable degree, by the determinations of their will. This was the state in which the Founder placed him, and in which therefore he designed he should continue; as being indeed the most proper for him in that capacity, in which alone he had any concern with him, namely, as governor of his chief college. For as to the likings or dislikings, conveniences or inconveniences, of persons in that situation, considered in their private capacity, it is not to be supposed, that, in laying out the plan of his colleges, the Founder had regard to them: they are but trifles in comparison, and, if only for their variableness and inconsistency, could never have been perfectly provided for. The great object of his attention, on that occasion, we may take for granted from the nature of the case, could only have been,

been, what constitutions were, absolutely and upon the whole, most expedient for the good of his societies: what measures most conducive to render his design in them successful to perpetuity. And surely between the two, of subjecting the governor to influence, or preserving him independent, there could be no room to hesitate: the superior advantage of the latter, for accomplishing the end in view, being so obvious and glaring, as to recommend itself instantly to his notice, and extort, as it were, the preference. But now if the sense I have given of this statute be false, this independence is gone; the security, arising from it, for the due execution of statutes, is gone; the governor, in prospect of elections, is exposed to all the embarrassments, and all the condescensions, of competition; and the Founder, after employing so much thought to contrive, so much earnestness to recommend, so much authority to enjoin, a wise and well-concerted scheme of discipline,

cipline, hath, at last, with one stroke of his pen, enervated, and in effect, abrogated, the whole. Shall we admit this? If not, the sense I have given of this statute must stand good, as not only the plainest, but, indeed, the only sense it can bear consistently with the general intent and purpose of his statutes, with that frame and system of polity he had so wisely established in his two colleges.

There are other inconveniences, besides these hinted at, which would flow from a contrary interpretation of this statute: but, the subject being invidious, I chuse not to enlarge upon them, for fear of being suspected to have a view in what I say to any particular persons or proceedings: which I beg the reader to believe I have not; being only sollicitous to state the case, as it appears to me, abstractedly, and in itself, together with some of its genuine consequences; which, though there is no necessity they should *always* take place,
are

are of so pernicious a nature, that they should be prevented, if possible, from ever taking place. And thus I desire to be understood; having no intent to offend any, but to deliver, what it concerns me to deliver, in the spirit, I hope, of peace, as well as truth.

If this explication then be right, as I have acted in conformity to it, this, I suppose, will justify my conduct. If it be not right, I should be obliged to any one, who would point out to me, with candour, wherein it is wrong. Of twenty-four predecessors, that I have had in my office, the six last only were chosen from Wardens of New-college. Now the first Warden of Winchester college was put in by the Founder in the year 1382, and the first of these six was elected in the year 1679; so that for 297 years together this statute, in the sense I have given of it, was not once, in this manner, transgressed. The whole course of time, that has run since, amounts in all

but to 79 years: so that antiquity, in this question, is evidently on my side. And within the first 61 of these 79 years were all the six elections just spoken of made, and in neither of them all was this statute observed: so little prospect is there, when an ill custom is once introduced, that it should ever cease of its own accord. The election of Dr. Purnell was made after the example of the six preceding: what then can exempt it from the charge to which they were liable, of being, in truth, a deviation from the statute; let those explain, who think themselves concerned to maintain its validity.

Such it appeared, as we find, to the visitor; who, in order to recall the ancient method of electing, and to secure for the future a due regard to the institutions of the Founder, thought proper to interpose, to set it aside as a deviation, and to appoint a Warden by his own authority. Whether he had a right so
to

to do, let any one judge from the direction thus given him by the Founder.—
Si verò socii dicti nostri collegii—præfatam electionis formam non observaverint, tunc omni potestate eligendi illâ vice ipsos volumus fore privatos, ac potestatem providendi præfato collegio prope Wintoniam de custode idoneo domino episcopo Wintoniensi vel ipsius vicario, &c. concedimus per præsentes. Then follow the qualifications of the person, whom the visitor is to appoint, in nearly the same words, which were above given, as a direction to the fellows of New-college whom they should chuse; without the least notice taken *here*, any more than there was *there*, of the Warden of New-college. If there be any certainty in language, it is plain from hence, that the visitor not only hath a right to annull an irregular election, but, so far as a regard to the trust reposed in him can *oblige* him, he is *obliged* to annull it. The Founder hath positively ordered it: *volumus fore privatos.* And it is no less clear, that

he hath granted him in that case, a privilege, under certain conditions, of nominating a person himself:---*concedimus per presentes* *. The only thing left to his discretion is the fixing upon one person rather than another, among several who

* The privilege of appointing a Warden of Winchester college, on failure of conformity to statute in the proper electors, is not only thus clearly vested in the bishop of Winchester by statute, but hath also been actually claimed and exercised by *one* at least of his predecessors, and that in those *earlier times of the foundation*, of which the letter-writer speaks p. 4. In the year 1520 (the 138th from the date of the foundation-charter) bishop Fox, who, in character of a prelate of great wisdom and probity, as well as being himself also the founder of a college, cannot but be thought to have been extremely tender of breaking in upon the rights and violating the statutes of such societies, did, upon the neglect of the then Warden and fellows of New-college to chuse a Warden of Winchester college within the time limited by statute for such election, appoint, by his own authority as ordinary and patron, Dr. Ralph Barnake to be Warden of Winchester college in the room of John Rede, B. D. who had resigned that post. This appears from the instrument of appointment, and mandate for admission, of the said Warden Barnake: transcripts of both which are yet to be seen in the bishop's registry at Winchester, and a copy of the former probably at New-college in Oxford.

are

are equally qualified; and if in this particular he hath acted according to the best of his judgement, whatever the event be, the Founder's will is satisfied. Now if the visitor hath a right by statute of appointing a qualified person according to the best of his judgement, and, by any felicity of circumstances, he hath entertained that favourable opinion of me, which the Founder requires him to entertain of the person he shall nominate, how it should be unstatutable for him to appoint even me, will be difficult to shew. And if such appointment be agreeable to statute, how my acceptance of it should be contrary to statute, will be yet harder to resolve. So far from it, in my opinion, that, as its being in my power to accept it was owing solely to a resolution taken of correcting an abuse committed against statute, my determining to accept it was the highest evidence I could give that I approved of such a resolution: and approving of a resolution to enforce obedience to the statute, is as great

great an instance, as can well be demanded, of any man's disposition to honour the statute. And if this correspondent of Dr. Lowth's, who is so much displeased, that I have paid this honour to it, be indeed the Wykehamist he pretends to be, he may easily recollect, that, at his first admission to a Fellowship in New-college, he promised, upon oath, that he would willingly take upon him any office in it, to which the society should think proper to depute him; a thing in several of the statutes particularly insisted on. See rubr. 7. 28. 57. And though the office, to which I am deputed, be not indeed in that college, nor the deputation by that society, yet the reason of the case, and the authority to be regarded, is the very same: and he might have supposed, had his charity been extensive enough, that a thought of this nature, and not purely a view to self-interest, might have had its influence in determining my choice. I, at least, can assure him it had :

had: and am still persuaded, that the duty I owed to the Founder, and the regard I bore to his societies, required of me, since I could innocently engage in it, not to decline a station, which would yield me so frequent opportunities of expressing both to advantage, and probably be an occasion to me of passing the remainder of my life in a service, which the more I shall find myself able to promote, the more I shall certainly delight in, the service of Wykeham's family.

Upon a review of this account I doubt not but the reader will be perfectly satisfied, that the Warden of New-college is no where to be found, either explicitly or implicitly, in the description, given by the Founder, of the persons designed by him as qualified candidates for the headship of Winchester college. And this, in fact, excludes him from being qualified; for by this description he must stand or fall. We must

must take the Founder's enumeration as we find it, nor are we at liberty to except to any part of it merely because we may be unable to penetrate and comprehend all his reasons. And therefore, if any one shall contend, that, though the clause in question be expressed in such a manner, as to *exclude* the Warden of New-college, yet such exclusion was accidental and undesigned by the Founder, I am not concerned to dispute that point with him; especially, as such an objector must be forced to acknowledge, that he did not design to *include* him; not even in this particular clause, much less can any such intention be inferred from the whole frame and system of his institutions, which loudly proclaims the contrary. Grant, that the Founder, in composing this clause, never thought of the Warden at all, yet it is not what we may surmise or conjecture, without any authority, about his thoughts, but the obvious literal grammatical sense of his words, that

that is to be our immediate guide in interpreting his statutes. To this he expressly requires us to adhere, and that under pain of perjury, as well as expulsion, if the attempt to do the contrary be proved upon us: declaring in the strongest terms his abhorrence of all artful glosses* contrived on purpose to evade it, and accommodated to particular cases, *magis et aptius*, as he speaks towards the conclusion of his statutes, *ad casum seu prætensum dubium, de quo quæritur, applaudentes*. When therefore this is plain and clear, as I have demonstrated it to be in the present case, there is neither room nor occasion for farther reasonings.

And yet, if we could suppose the Founder ever so intent on putting a bar

* I think interpreting *recedere à collegio* (or even, *à societate collegii*) by *recedere à statu et conditione socii*; and attempting to prove the Warden to be a fellow by saying that he is *socius præpositus cæteris sociis, socius custos cæterarum sociorum, socius major*, and the like, are glosses of this sort, though not very artful.

to the Warden's pretensions, he could not have done it more effectually, however he might more formally, than by giving such a description of the persons eligible, as by no reasonable construction can be brought to suit him. Why he did not proceed farther, and make a special statute on purpose to prohibit his being chosen, though we cannot certainly know, we may form very probable conjectures.

In the first place, it was not necessary: what he had already done to this effect, being, as we have seen, abundantly sufficient. Possibly, likewise, in composing this statute, he might not have been anxious to guard particularly against the Warden. He knew very well, that he had made a much ampler provision for him already, and had framed his statutes and scheme of discipline in such a manner, as, if considered, will soon shew the impropriety of regarding the head as a candidate; and might, there-

therefore, not suspect, that he would ever offer himself as such, or be proposed by others, upon a vacancy: and in this disposition of mind might have neglected possibly, or thought it superfluous, to take all the precaution to obviate such an event, which the case in its nature would have admitted, and which, it is most likely, he would have taken, had he looked on the event itself as probable, or had it as an object more distinctly in view. And if this was truly the case, there is no difficulty at all in it. The Warden, upon this supposition, is clearly left out of the question: and, except it be in seeing, that the form be observed, and in delivering his own voice properly, utterly unconcerned in the whole transaction. Fall to whose lot it will to be moved, he is to continue still in his post. And thus the description given by the Founder will relate entirely to *other* persons. In this view of things (the Warden supposed to be omitted) the chief concern of the Foun-

Founder will appear to have been, to prevent the election of two sorts of persons, *the extraneous* and *the infamous*; those who should *not* have been obliged to him *at all*, or at least not *principally*, for their support and education; and those, who *being* thus obliged, should have acted so unfuitable a part, as, for their demerits, to have been driven from that foundation of his, on which they were fellows, in disgrace. And, to secure these points the more effectually, he hath ordered, that the person qualified to be elected to the wardenship of Winchester college, shall be one, who, at the time of such election, either *is* a fellow in one of his two societies, or, having formerly *been* so, hath left the society, whereof he was fellow, on some reputable motive. Which last part of the clause not requiring, nor even supposing, that the person eligible should have left *both* the societies, but only that, of which he was fellow, seems to me very fairly to com-

comprehend all such schoolmasters of Winchester college, as, before, had been fellows of New-college and left that college with esteem. As the choice of such persons is plainly agreeable to the literal sense of the statute, so is it consistent, as far as I perceive, with the general intent of the Founder in the whole structure of his polity, which that of a Warden of New-college most essentially contradicts. And this, I imagine, will justify the election of those schoolmasters *, to whose case the letter-
write

* Of these there were five, Whyte, Bilson, Harm Love and Burt: before whom there had been two others who were likewise, in their times, made Wardens of Winchester college, namely, Rede and More: but these had left their office of schoolmaster long before they were elected Wardens of this college. All the seven, if rightly elected, must have been so on the title of having receded in a proper manner from New-college, where they had been fellows: for of Winchester college not one of them *ever was* fellow. Dr. Chaundler, who is cited likewise by the letter writer, was chosen Warden of Winchester college immediately from being fellow of New-college: which is perfectly statutable. The regularity and propriety of his removal, afterwards, from the headship

writer refers p. 48. and p. 56. as favouring his own sentiments. They had *all* been fellows of New-college; they had *all* quitted that college in order to be placed at the head of the school here; than which there cannot easily be assigned a more creditable cause of recess: and in this state they were *all* found at the time of their respective elections. I see not, therefore, but that these elections were regular. Yet, whether they were regular or not, is a point, which I need not contest:

of Winchester college to that of New-college, will but slenderly infer the like regularity and propriety of a motion supposed to be made in the *contrary* direction, from the headship of New-college to the headship of that of Winchester. Unless these two are the *same*, reasons may hold against the *one*, which are of no force against the *other*. Had the author, instead of this, given us an instance of some schoolmaster of Winchester college, made such immediately from being fellow of the same college, but who had never been fellow of the college at Oxford (a case in its nature very possible) there would have been some shew of resemblance between the election of such a person, and the election which he takes upon him to patronise. The letter of the statute would, in either case, have been equally transgressed; as such a person could not be said to have receded from the college, whereof he was fellow, only

test: the decision of it, either way, in no sort affecting the validity of *my* appointment.

Before I dismiss the subject, it concerns me to take notice of a passage in the letter to Dr. Lowth, wherein I am said “ to have approved of the conduct “ of the fellows of New-college in the “ election of Dr. Purnell to the wardenship of Winchester, as regular and “ statutable;--- to have declared, that I

by being made schoolmaster, any more than the Warden of New-college could be said to have receded from the college, whereof he was fellow, only by being made Warden. In this respect therefore the cases would have been parallel. But in another respect, of far superiour consideration, in respect of the general intent of the Founder in the whole frame of his institutions, they would have widely differed. The schoolmaster might have been elected in perfect consistence, as far as I see, with this; the Warden, not without the utmost repugnance to it: so that even such a precedent as this would have been of no service to our author's cause, had he produced one. But that no such precedent *can* be produced, is plain from the succession of the Wardens of Winchester college, and the accounts of them, which the registers furnish.

“ should look on such a step in the Vi-
 “ fitor, (as he hath since taken,) as an
 “ unwarrantable stretch of power; ----
 “ and, moreover, that I would not ac-
 “ cept of a preferment from him, thus
 “ circumstanced, if it should be tendered
 “ to me.”

As I was not conscious of this appro-
 bation, nor of ever having made such de-
 clarations, it could not but startle me
 at first to find my self so roundly charged
 with them. But as it was a charge
 only, without the least proof to support
 it, or any one circumstance mention-
 ed of time, place, person, intent, or
 occasion, relative to the subject of it,
 I was not long without the comfort of
 believing, that it would not have been
 left in such a naked state, had the au-
 thor of it been provided with any such
 proof, or furnished with any such cir-
 cumstances to produce. On the other
 hand, it was difficult, with any senti-
 ments of humanity, to suppose the whole
 to

to be pure invention. Some grounds there must surely be, though we suppose them ever so slight, for an accusation of so important a nature. Balancing these matters in my mind, I determined at length to consult my friends; particularly him, with whom I conversed about the time by this author intended, namely, within a day or two after Dr. Purnell's election; (which friend, however, prevented me by writing to me first) in order to get as minute intelligence, as I could, of any thing that might then have escaped me, and been capable of being wrought up into such a shape. And by their information added to my own recollection I am enabled to give this account of the matter. The moment Dr. Purnell's election was over, and it was seen how I had disposed of my vote, it was immediately suspected, and, soon after, asserted, that I had acted thus *by instruction*; that I had secretly used artifice to supplant Dr. Purnell; made interest with the Bishop to be appointed

in his stead ; was, in consequence, let into his Lordship's intentions ; assured of success in my own scheme ; and had voted in the way I did, only to save appearances. And though not a tittle of this, from one end to the other, had the least truth in it, yet the clamour, once raised, was not easily to be appeased. My friend, concerned that I should lie under such dishonourable suspicions, and yet not knowing well how to clear me, sounded me a little on the subject, and was particularly inquisitive, whether my voting, as I had done, proceeded from any objection I had to the customary manner of electing. I assured him at once, without the least reserve, and without entering, that I remember, into the reasons of his enquiry, that it did not ; as it really did not : for I voted for Dr. Lowth upon motives of a different nature : the oath administered to the electors, and the nature of the trust itself abstractedly from the oath, requiring of them, in my opinion, to nominate, not only

only a person capable, even in a creditable manner, of executing the office, but that very person, whom they, in their consciences, judge to be the fittest, upon the whole, of any they can think of, to be appointed to it. This he, in his zeal for my reputation, and not with intent to asperse me, (which is the use the letter-writer makes of the intelligence,) immediately represented to those who were discontented with me; and, through mistake or design (I hope only the former) it hath been improved by this author into an approbation of Dr. Purnell's election, as having been regularly, that is, statuta- bly, made. But, before he had represented the matter thus, he should have considered, that it doth by no means follow, that, because a man doth not *act* with a *view* to a *particular* objection, therefore he *hath* no such objection. And farther, that, even if I had voted for Dr. Purnell, this would have been no evidence, that I had approved of his election *as regular*, because I might have voted for him out

of private friendship, without having sufficiently considered, whether it were regular or not, in hope, as there were different reports concerning it, that the Visitor would not interpose. In large societies, especially where the members have been bred up at the same place, and many of them together, from their youth, it is not so strange a thing for private regards to over-rule much better principles. Besides, the approbation of any conduct *as regular*, if it proceed from judgement, implies an enquiry, not only into that conduct, but into the rules by which it should be guided; a comparison of one with the other; and a decision, upon due deliberation, in favour of such conduct, *as agreeable* to such rules. If the author mean such an approbation as this, it concerns him to shew, at what particular time within the compass of two or three days after the election of Doctor Purnell, (for to that space of time he is confined) at what place, and upon what account I set my self to work upon making

making this enquiry, and passing this decision; on the conduct of the fellows of New-college at that election. If he mean not such an approbation as this, but only a precipitate and groundless approbation, made at random, and without any previous consideration or enquiry, he may spare himself this trouble : but then he had better have spared himself the whole : for such an approbation as this, as it doth no honour to any conduct whatsoever, so is it nothing to his purpose, as carrying with it no indication of my sentiments.

The two judicious declarations, assigned to me in consequence of this approbation, if the approbation fails, by which alone they are supported, must, I think, fall of course. Both of them, in truth, are nothing else, but misrepresentations of what I had said in private conversation, denoting my *acquiescence* in the college election. The summons, by which I was sent for to London, and which reached me the day after

after that of the election, gave me not the least intimation of the business and intent of my journey; not even so much as that I was to wait upon the Visitor; nor, till I actually appeared before him, did I know for certain any thing of his resolutions. In this state, though my manner of voting had raised the suspicions abovementioned, and this summons, as soon as it should be known, I was sure, would confirm them; yet, whatever opinion I might have of the election, whilst I had no certainty but that it might be, if not approved of, yet connived at, by the Visitor, I did not look upon it as incumbent on me to make a particular out-cry against it; nor had I then attained to that clear and perfect insight into the true merits of it, which might have justified me in such exclamation. There was no reason to expect this of *me*, more than of any other voter in the society. Neither, in short, can I boast, that if, in the event, his Lordship had consented to the election, whatever I might have thought of it

it myself, I should have been so singularly heroick, as to have risen up and condemn'd his proceedings. I arrogate not to myself such superior merit. Let me rather acknowledge, that, when I communicated the purport of my summons to a few friends, and we were unanimous in our guesses at the occasion of it; discouraging freely upon the subject, and knowing the present discomposure of the society, so far as this, and no farther, I might deliver myself in favour of the election; that if, upon my arrival in town, I should find his Lordship of Winchester in a disposition to let it pass, I would use no endeavours on my part in the least degree to obstruct it; and, moreover, (which is but a consequence of this) in case his Lordship should see proper to make an offer of the headship to me, I would not determine to accept the favour, till I should be satisfied, that by declining it I could be of no use to Doctor Purnell. All which, though I needed not have promised, yet, having promised,

I did

I did my part in performing. The ambition, of being advanced to the station I am in, had no such influence then on my mind, as this author seems to imagine. I looked at the *circumstances* more than at the *thing*. And in that view it appeared to me as an object rather to be feared than wished. From the dissatisfaction I saw to be already sprung up, I drew my conjectures at what was to come; and expected, as soon as I should be placed in it, to be exposed to the attacks of envy and malevolence, resentment and rage, and all those other stormy passions which are the usual attendants of disappointment: not to say, the danger of being pursued at law, and involved in a course of expensive litigation. Experience has shewn me, that this was immensely overcharging the matter. But 'tis the nature of apprehension to magnify its object; and, had I not had a strong sense of duty to oppose to it, I know not how far it might have gone, upon that occasion, towards rendering me the victim of
my

my own pusillanimity. Whether the conversation I have thus acknowledged, in whole or in part, was communicated immediately to the writer of this letter, or conveyed to him through a succession of hands, I know not: but of this I am entirely satisfied, partly from my own memory, and partly from the letters I have received about it from my friends, that all that he ascribes to me beyond this, or inconsistent with it, is so much pure addition and improvement.

Yet supposing it were all truth, and just as he states it, were he but in earnest, he hath made my apology. For he allows me in due time to have changed my mind. But though by this he only means, that I disguised it, yet hath he spoken more truth in that acknowledgement, than he was aware of. If bringing the mind from a more fluctuating to a more settled state, upon any question, be changing it; something of a change of this sort, though not very considerable,

able, I cannot deny, was wrought in my mind after the time that he speaks of, even after the offer made me by the Bishop. For, though from the accounts which had been formerly sent me of the papers, which this author hath republished, (for I was out of the kingdom when they first came out) it is impossible but I must have had reasons, at least, for suspecting, that the late method of electing was wrong; and from what I had heard of it on many occasions, I was enough inclined to believe it so; yet was not this so full and compleat a persuasion, as I thought it became me to have of this point, before I engaged, upon the strength of it, to take upon me so important a charge, even though recommended to me by his Lordship's judgment. I knew that I had not sifted the sense of the statutes with that diligence, that is necessary to a perfect information on a point of such consequence; and therefore took the liberty of hanging back a little, and making some demur

mur to his Lordship's proposal: begging
 the favour, that he would grant me
 sufficient time to consider of the matter
 farther, and to form my determination;
 and withal, to enable me to do this pro-
 perly, that he would be pleased to sup-
 ply me with a copy of the statutes of
 each college, that I might freely exa-
 mine such passages of them, as I should
 apprehend might relate to the subject.
 His Lordship was pleased to comply with
 my request in each of these particulars:
 and I accordingly employed the best part
 of two, if not three, days, in consulting
 and comparing statutes with a particular
 attention to this very point. The result
 was, that I was fully convinced, so as to
 have no scruple left, of his Lordship's
 right for that turn to nominate; and
 consequently that I might, if I should
 think fit, very innocently accept his
 favour, without the least incroachment
 upon any of the rights either of the
 Warden, or the fellows, of New-college:
 nay, to the establishment of them all;
 because

because in obedience to, and therefore in confirmation of, the authority of those statutes, upon which alone they are all founded. And in this persuasion I did accept it, with great integrity and confidence of mind, and great gratitude to his Lordship for it. Why I had not made so accurate a search into this matter before, if it were necessary, I could easily explain. But 'tis enough, that I had not done it. And how far I had approached towards it, I cannot precisely say. Thus much, however, I am ready to acknowledge, that, as far as I fell short of it, so far I was to blame: for the means of doing it were always in my power. Not that I had any reason to be scrupulous about it when I came to deliver my vote, because the person I nominated was free from *all* exception. This concession, however, as it is to my disadvantage, may serve to convince this writer, that, when I know my self to be in the wrong, I am far from being disinclined to confess it: and this may entitle

title me perhaps to expect, that, since I
 have now proved him to be so, he should
 be disposed to follow this example. But,
 for my part, I make no such demand.
 It is not for frailty to use rigour. What
 is past, I freely excuse; and shall impute,
 if he pleases, to misinformation; only
 let him do me this justice in return,
 that, if hereafter he shall happen to hear
 (as what may he not hear in his traffick
 with a censorious world?) any other sur-
 mises advanced to my prejudice, he will
 not forwardly give credit to them, nor
 unthinkingly indulge a zeal in proclaim-
 ing them; but reflect, that credulity and
 precipitation are never worse guides than
 when they lead to the commission of un-
 provoked, and perhaps irreparable, inju-
 ries.

CHR. GOLDING.

Winchester College;
 Sept. 30. 1758.

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P. S.

P. S. Left any Wykehamist should be
 offended at the liberty I have taken
 of citing the statutes of this college in
 the original, I assure him, that I have
 not done it without the approbation
 of all those, whom, by the said sta-
 tutes, I was obliged, in this case, to
 consult. See Stat. of Winchester col-
 lege, rub. 42.

F I N I S